

## Requirements that Apply to Subrecipients or Vendors under Office of the National Coordinator for Health Information Technology Grants and Cooperative Agreements

**NOTE:** Grants Management Advisories (GMAs) provide guidance for Office of the National Coordinator for Health Information Technology (ONC) grant and cooperative agreement recipients in selected areas based on ONC's receipt of recurring questions or other factors. Their purpose is to provide a common interpretation for all ONC recipients of how ONC will apply existing policy as reflected in award terms and conditions. They do not replace or modify award terms and conditions.

This revised GMA supersedes the original version of GMA 2012-03.

### ISSUES:

What types of requirements must you, as a recipient, include in a formal agreement with a subrecipient or vendor under an ONC grant or cooperative agreement?

How do you determine what Federal requirements to apply to a third party (subrecipient or vendor) to which you award funds under your ONC grant or cooperative agreement?

### KEY POINTS:

- ONC issues a Notice of Grant Award (NGA) that serves as the legal agreement between ONC and your organization. It specifies the terms and conditions that apply to expenditure of the Federal funds awarded, and costs/contributions used to meet any matching or cost-sharing requirement. All of the requirements cited or incorporated by reference in the NGA apply to you as the recipient. For some of those requirements, including cost principles, grants administration requirements, and audit requirements, as described below, you must apply the same or a similar requirement to entities to which you award funds whether to (1) carry out part of the substantive programmatic activity (subrecipients), or (2) provide goods or services that you use in the project (vendors).
- Office of Management and Budget (OMB) Circular A-133 characterizes a subrecipient relationship as one under which you assess the entity's performance against the objectives of the Federal award, and the subrecipient organization
  - is responsible for programmatic decision-making (to the extent you specify in the subaward),
  - is responsible for adherence to applicable Federal program compliance requirements, and
  - uses the Federal funds you award for its own program rather than providing goods or services for your program.
- OMB Circular A-133 characterizes a vendor relationship as one in which the receiving organization
  - provides goods and services to you as part of its normal business operations,
  - provides similar goods or services to many different purchasers,
  - operates in a competitive environment, and
  - provides goods or services that are ancillary to your operation of the Federal program.

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- Requirements that you must apply to subrecipients or vendors that also apply to you sometimes are termed “flow-through” or “flow down” requirements. These may include both ONC programmatic requirements and Department of Health and Human Services (HHS) grants administration requirements, as specified in your NGA. These requirements do not automatically apply to subrecipients or vendors by virtue of being in the ONC NGA. ONC has no direct legal relationship with those parties. In the event of non-compliance by a subrecipient or vendor with an applicable requirement, ONC, an auditor, or other reviewer will look to your agreement/contract with the subrecipient or vendor for sufficiency. Your ability to enforce a requirement or take other necessary action is through your agreement/contract with that entity, not through the NGA.
- In addition to distinguishing applicable requirements based on whether your relationship with another party is a recipient/subrecipient or a recipient/vendor relationship, you must consider the type of entity. For example, because ONC makes your award subject to Federal cost principles to determine allowable costs, you must flow down applicable Federal cost principles to subrecipients and to vendors with cost-reimbursement contracts. However, the Federal cost principles that apply depend on the type of entity receiving the subaward/contract, which may not be the same as those that apply to you. For example, if you are a nonprofit organization and you make a subaward to a university, although the cost principles in OMB Circular A-122 (2 CFR Part 230) apply to you, you must apply OMB Circular A-21 (2 CFR Part 220) to the university. Similarly, the grants administration requirements you apply to a subrecipient may differ from those that apply to you. For example, if you are a State government and you make a subaward to a non-profit organization, 45 CFR Part 92 applies to you, and you must apply requirements in 45 CFR Part 74 to the subrecipient. However, if you are a non-profit organization and you make a subaward to a university, 45 CFR Part 74 applies to both you and the university.
- We include two attachments to this GMA to help you to understand which requirements to apply. Attachment 1 indicates the applicability of the HHS grant administration regulations at 45 CFR Parts 74 and 92, the Federal cost principles, and audit requirements to *subrecipients* under ONC grants or cooperative agreements by type of organization. Attachment 2 indicates the applicability of those requirements to *vendors*. If you are a State government, note that you will follow the same policies and procedures that you use for procurements from non-Federal funds, but you may use Attachment 2 as guidance. You also should note the following:
  - Because the HHS Grants Policy Statement (HHS GPS) is a term of your award, you may incorporate it by reference in your subawards and indicate which provisions apply.
  - In addition to audit requirements, you must include the “access to records” provisions in 45 CFR 74.53 and 45 CFR 92.42, as applicable, in subawards, and those in 45 CFR 74.48(d) and 92.36(i)(10) in applicable contracts.

#### **RECIPIENT RESPONSIBILITIES:**

- Consistently characterize your relationships under the ONC award as provided in Federal guidance and your own policies.
- Determine which requirements apply to subrecipients/vendors based on your NGA and the nature of the relationship and type of entity.
- Provide subrecipients and vendors with legally complete agreements that, among other things, cite or include requirements specified by the NGA.

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- Ensure that applicable Federal requirements, as stated in the NGA, are included in agreement/contracts with subrecipients and vendors, and subrecipients and vendors comply with these requirements.

**REFERENCES:**

45 CFR Part 74, including 74.1, 74.26, 74.27, 74.48, 74.53, and 74.80 through 74.83

45 CFR Part 92, including 92.4, 92.22, 92.36, 92.37, and 92.42

HHS Grants Policy Statement

**CONTACT:**

If you have any questions concerning this GMA, contact your grants management officer.

**Requirements Generally Applicable to Subrecipients by Organizational Type<sup>1</sup>**

<i>If the type of entity to which you are making a subaward is a</i>	<i>then (1) the HHS grants administration requirements that you must apply are those in</i>	<i>(2) the Federal cost principles and HHS cost policies that you must apply are those in</i>	<i>and (3) the audit requirements that you must apply are those in</i>
State, local, or tribal government,	<a href="#">45 CFR Part 92</a> (the HHS implementation of the OMB Circular A-102 common rule) and the HHS GPS <sup>2</sup> ;	OMB Circular <a href="#">A-87</a> (2 CFR Part 225), incorporated by reference in 45 CFR 74.27 and 92.22, and the HHS GPS;	<a href="#">45 CFR 74.26</a> , which incorporates by reference OMB Circular <a href="#">A-133</a> .
college, university, or other institution of higher education,	<a href="#">A-110</a> (2 CFR Part 215), implemented for HHS at <a href="#">45 CFR Part 74</a> and the HHS GPS;	OMB Circular <a href="#">A-21</a> (2 CFR Part 220), incorporated by reference in 45 CFR 74.27 and 92.22, and the HHS GPS;	<a href="#">45 CFR 74.26</a> , which incorporates by reference OMB Circular <a href="#">A-133</a> and the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507).
non-profit organization (other than an institution of higher education or hospital),	<a href="#">A-110</a> (2 CFR Part 215), implemented for HHS at <a href="#">45 CFR Part 74</a> and the HHS GPS;	OMB Circular <a href="#">A-122</a> (2 CFR Part 230) (except for entities specified in Attachment C <sup>3</sup> to the circular), incorporated by reference in 45 CFR 74.27 and 92.22, and the HHS GPS;	<a href="#">45 CFR 74.26</a> , which incorporates by reference OMB Circular <a href="#">A-133</a> and the Single Audit Act Amendments of 1996.
non-profit hospital,	<a href="#">A-110</a> (2 CFR Part 215), implemented for HHS at <a href="#">45 CFR Part 74</a> and the HHS GPS;	<a href="#">45 CFR Part 74, Appendix E</a> , and the HHS GPS;	<a href="#">45 CFR 74.26</a> , which incorporates by reference OMB Circular <a href="#">A-133</a> and the Single Audit Act Amendments of 1996.
for-profit organization (including a for-profit hospital),	<a href="#">45 CFR Part 74</a> , including its Subpart E, and the HHS GPS;	<a href="#">48 CFR Subpart 31.2</a> (Federal Acquisition Regulation [FAR]) ( <a href="https://www.acquisition.gov/far/">https://www.acquisition.gov/far/</a> ), incorporated by reference in 45 CFR 74.27 and 92.22, and the HHS GPS;	<a href="#">45 CFR 74.26(c) and (d)</a> .
foreign organization,	the HHS GPS;	the cost principles applicable to the type of entity regardless of the fact that it is a foreign entity, e.g., A-21 for a foreign university, and the HHS GPS;	the HHS GPS.

<sup>1</sup> All regulations and guidance in Title 2 of the Code of Federal Regulations are available at <http://ecfr.gpoaccess.gov>. Select "Title 2" and then the applicable Part.

<sup>2</sup> The HHS Grants Policy Statement is available at [http://dhhs.gov/asfr/ogapa/aboutog/ogpoe/grants\\_mgmt\\_policy\\_sources.html](http://dhhs.gov/asfr/ogapa/aboutog/ogpoe/grants_mgmt_policy_sources.html). Then scroll to "HHS Grants Policy."

<sup>3</sup> These entities are subject to 48 CFR 31.2.

**Requirements Generally Applicable to Vendors by Organizational Type**

<i>If the type of entity to which you (if you are other than a State government) are awarding a contract for the provision of goods or services is a</i>	<i>then (1) the contract requirements that you must apply are those in</i>	<i>(2) the Federal cost principles<sup>4</sup> that you must apply are those in</i>	<i>and (3) the audit requirements that you must apply are those in</i>
State, local, or tribal government,	<a href="#">45 CFR 92.36(i)</a> ;	OMB Circular <a href="#">A-87</a> (2 CFR Part 225);	the terms and conditions of the contract <sup>5</sup> .
college, university, or other institution of higher education,	45 CFR 74.48 and Appendix A to <a href="#">45 CFR Part 74</a> ;	OMB Circular <a href="#">A-21</a> (2 CFR Part 220);	the terms and conditions of the contract.
non-profit organization (other than an institution of higher education or hospital),	45 CFR 74.48 and Appendix A to <a href="#">45 CFR Part 74</a> ;	OMB Circular <a href="#">A-122</a> (2 CFR Part 230) (except for those entities specified in Attachment C to the circular <sup>6</sup> );	the terms and conditions of the contract.
non-profit hospital,	45 CFR 74.48 and Appendix A to <a href="#">45 CFR Part 74</a> ;	<a href="#">45 CFR Part 74, Appendix E</a> ;	the terms and conditions of the contract.
for-profit organization (including a for-profit hospital),	45 CFR 74.48 and Appendix A to <a href="#">45 CFR Part 74</a> ;	<a href="#">48 CFR Subpart 31.2</a> (Federal Acquisition Regulation [FAR]);	the terms and conditions of the contract.
foreign organization,	Not specified (other documents, such as the HHS GPS, can be used as guidance);	The cost principles otherwise applicable to the type of entity regardless of the fact that it is a foreign entity, e.g., A-21 for a foreign university or 48 CFR Subpart 31.2 for a foreign for-profit entity;	the terms and conditions of the contract.

<sup>4</sup> 45 CFR 92.36(f)(3) provides that governmental recipients may reference their own cost principles that comply with the applicable Federal cost principles.

<sup>5</sup> Expenditures by vendors are not considered "Federal awards" for purposes of OMB Circular [A-133](#).

<sup>6</sup> These entities are subject to 48 CFR 31.2.